

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS
BOARD REGION FOUR**

**HCR ManorCare King of Prussia, LLC d/b/a
ManorCare Health Services-King of Prussia¹**

Employer

and

Case 04-RC-265101

**District 1199C National Union of Hospital and
Health Care Employees, AFSCME, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue in this proceeding is whether to hold a manual or mail ballot election. HCR ManorCare King of Prussia, LLC d/b/a ManorCare Health Services-King of Prussia (the Employer) urges the Region to conduct a manual election, while District 1199C National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO (Petitioner) advocates for a mail-ballot election. After reviewing and considering the arguments of the parties, for the reasons discussed below, I find that a mail-ballot election is appropriate as it is the safest and most efficient way to conduct the election in this case.

Petitioner filed a petition under Section 9(c) of the National Labor Relations Act (the Act), as amended, seeking to represent a group of employees of the Employer. A hearing was held on September 15, 2020 by videoconference before a Hearing Officer of the National Labor Relations Board (the Board).² At the hearing, the parties reached stipulations with respect to all litigable issues, including composition of the voting unit. Although election details, including the type of election to be held, are nonlitigable matters left to the discretion of the Regional Director, the parties were permitted to file briefs regarding their respective positions as to the mechanics of the election.

I. Type of Election: Manual or Mail

a. *Factual Overview*

The Employer operates a nursing and rehabilitation facility in King of Prussia,

¹ The Employer's name appears as amended in the hearing.

² All dates occurred in 2020 unless otherwise noted.

Pennsylvania,³ a Philadelphia suburb. The Petitioner seeks an election in a unit of Certified Nursing Assistants, Activity Assistants, Central Supply Clerks, Floor Care employees, General Clerks, Laundry Aides, Housekeeping Aides, Laundry/Housekeeping Aides, Medical Records Clerks, Staffing and Scheduling Coordinators, and Temp Nurse Aides who work at this facility. There are approximately 60 employees in these classifications.

At the outset, I take administrative notice of the continuing public health crisis in the United States created by the COVID-19 pandemic. To date, there have been more than 7.8 million confirmed cases of COVID-19 in the United States and over 215,000 deaths.⁴ The United States has experienced a widely shifting transmission rate, including sharp upticks in confirmed cases after periods of lower transmission. From March 15 through April 12, the seven-day moving average of new confirmed cases in the United States spiked from 435 to nearly 32,000 per day.⁵ Following a sustained decrease of confirmed cases through mid-June, the seven-day moving average rose sharply to a peak of 66,960 new COVID-19 cases in July. After again falling to a low of 34,371 on September 12, the seven-day moving average resumed a steady climb to 51,392 on October 14, a nearly 50% increase in a month. In the last seven days reported by Centers for Disease Control and Prevention (CDC), the daily counts for new cases exceeded 50,000 on four consecutive days.⁶

Pennsylvania followed a similar recent trajectory: after a July 28 peak of 974, the seven-day moving average fell to a low of 602 on August 27, but then more than doubled to a high of 1343 on October 13.⁷ In the course of the pandemic, Montgomery County, where the Employer is located, has had the third highest number of cases in Pennsylvania, and the second highest number of deaths.⁸ The rising numbers in Pennsylvania prompted Governor Tom Wolf to state recently that he is “very concerned about COVID-19 trajectory in Pennsylvania.”⁹ Currently, travelers returning to Pennsylvania from 26 states with “high amounts of COVID-19 cases” are advised to quarantine for 14 days upon return.¹⁰ As of October 14, Pennsylvania reported 175,922 confirmed COVID-19 cases and 8,411 deaths.¹¹ Of the 8,411 deaths reported in the state, 5,585 of them—approximately 66%—are associated with nursing homes and personal care homes.¹²

I also take administrative notice of the information, guidance, and recommendations of the CDC. The CDC recommendations for dealing with this public health threat include the use of cloth

³The Employer stipulated that it is a Delaware limited liability corporation that operates a nursing and rehabilitation facility located at 600 West Valley Forge Road, King of Prussia, Pennsylvania, the only facility involved in this proceeding, and that during the past 12 months, the Employer derived gross revenues in excess of \$100,000, and purchased and received at its King of Prussia, Pennsylvania facility goods and materials valued in excess of \$5,000 directly from points outside the Commonwealth of Pennsylvania.

⁴ CDC COVID Data Tracker Maps, charts, and data, October 14, 2020

⁵ https://covid.cdc.gov/covid-data-tracker/#cases_totalcases

⁶ https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases

⁷ Ibid.

⁸ Ibid.

⁹ <https://covid.cdc.gov/covid-data-tracker/#county-map>

¹⁰ <https://www.inquirer.com/health/coronavirus/live/coronavirus-covid-cases-philadelphia-pa-nj-de-updates-testing-news-trump-health-20201008.html>

¹¹ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Travelers.aspx>

¹² <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>

¹³ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/LTCF-Data.aspx>

face coverings and social distancing, among other things, and the CDC’s website emphasizes that “the *more people* an individual interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading.” Conversely, the CDC states that COVID-19 is “unlikely to be spread from domestic or international mail, products, or packaging”¹³ and simply advises that after handling the mail, individuals should wash their hands with soap and water or use hand sanitizer.¹⁴ Although not specific to Board elections, the CDC has encouraged officials to use voting methods, such as mail ballots, that minimize direct contact with other people.¹⁵

In addition, many state and local governments have issued COVID-19 restrictions tailored to the conditions in their communities. In March, Pennsylvania Governor Tom Wolf issued a Proclamation of Disaster Emergency, directed the closure of all non-life sustaining businesses, and ultimately issued a statewide Stay-at-Home order. Governor Wolf later announced a plan for the phased reopening and easing of restrictions using a system of colored phases – red, yellow, and green – to apply to individual counties as they reached milestones in lowering their incidents of positive cases.¹⁶ As of July 13, all Pennsylvania counties had moved into the “green phase” of reopening. Several work and congregate-setting restrictions continue in place under the “green phase,” telework must continue where feasible, businesses may operate at 75% occupancy, masks are required in all businesses and public areas, congregate care restrictions are in place, and indoor gatherings of 2000 or fewer people are restricted to 20% of the space’s maximum occupancy limit, among other restrictions.

Governor Wolf’s plan for reopening specifically underscores the need for protection in “high-risk settings, including correctional institutions, personal care homes, skilled nursing facilities, and other congregate care settings, and assurance that facilities have adequate safeguards in place such as staff training, employee screening, [and] visitor procedures and screening....”¹⁷ In recognition of that higher risk, the Pennsylvania Department of Health (PDH) has guidance in place, last updated on October 13, 2020, applicable to all skilled nursing facilities.¹⁸ The guidance reflects rules prescribed pursuant to the Centers for Medicare and Medicaid Services’ (CMS) Memorandum Ref: QSO-20-38-NH¹⁹ concerning the testing of individuals associated with skilled nursing facilities. Among other things, that memorandum states that staff with symptoms or signs of COVID-19 must be tested and are expected to be restricted from the facility pending the results of the COVID-19 testing.²⁰ It further notes that all persons entering the facility should be screened for signs and symptoms of COVID-19.²¹ In a separate memo, QSO-20-38-NH, CMS instructs that

¹³ Frequently Asked Questions, Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

¹⁴ Running Essential Errands, Delivery and Takeout, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>

¹⁵ Maintaining Healthy Operations, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

¹⁶ <https://www.governor.pa.gov/process-to-reopen-pennsylvania/>

¹⁷ <https://www.governor.pa.gov/process-to-reopen-pennsylvania/>

¹⁸ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Guidance/SNF-Guidance.aspx>

¹⁹ <https://www.cms.gov/files/document/qso-20-38-nh.pdf>

²⁰ Ibid.

²¹ Ibid.

any visitor to the facility exhibiting signs or symptoms of COVID-19 must be denied entry.²²

CMS guidelines emphasize that additional criteria for reopening nursing homes are necessary “even when states seem to be loosening restrictions on workplaces and businesses, because these facilities have been severely impacted by COVID-19.” That is so because “the vulnerable nature of the nursing home population combined with the inherent risks of close quarters living in a healthcare setting, requires aggressive efforts to limit COVID-19 exposure and to prevent the spread of COVID-19 within nursing homes.”²³

The PDH collects information regarding COVID-19 cases associated with nursing and personal care facilities by facility county. In Montgomery County, among 97 such facilities, there have been 3,115 COVID-19 patient cases, 175 cases among employees, and 808 deaths.²⁴ The PDH also compiles data on COVID-19 cases for each facility. In the Employer’s facility, it reports that there have been 42 resident cases, 13 deaths and 14 staff cases.²⁵ At the time of the hearing there were no positive COVID-19 cases at the facility, although a daily report posted by the Employer on its website titled “COVID-19 Facility Level Data” has shown that at least as of September 27 and continuing until October 6, it had one employee who was pending COVID-19 test results.²⁶ The Employer’s daily report further indicates that there are 36 “patients meeting COVID-recovered criteria.”²⁷ It is unclear why that number is higher than the number of resident cases less the number of resident deaths, or 29, reported by the PDH.

The Employer’s daily report shows COVID-19 infection data for all HCR ManorCare (now known as ProMedica Senior Care) facilities nationwide.²⁸ Of its 42 Pennsylvania facilities, 13 currently report no employees or residents who are either pending COVID-19 test results or currently COVID-19 positive, 14 report having one or more employees or residents pending test results, and 15 report having one or more employees or residents who are currently COVID-19 positive.²⁹ Among the latter 15, 13 of them report one or more employees who are currently COVID-19 positive. Three of those facilities – Yeadon, Wallingford and Huntingdon Valley – are, like the Employer, located in the Philadelphia suburbs. At Yeadon, nine employees are listed as COVID-19 positive; at its Kingston Court facility in York, also in southeastern Pennsylvania, eight employees are COVID-19 positive.

a. Positions of the Parties

²² <https://www.cms.gov/files/document/qso-20-39-nh.pdf>

²³ See also, *About 40% of coronavirus deaths are linked to nursing homes*, New York Times, September 16, 2020. <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html?auth=linked-google>

²⁴ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/LTCF-Data.aspx>

²⁵ Ibid.

²⁶ <https://www.promedicaseniorcare.org/media/9791/hcr-manorcare-snf-covid-10-14-20.pdf>

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

Petitioner argues that a mail-ballot election is appropriate for the petitioned-for unit. It highlights the number of past COVID-19 cases within the facility and argues that the Employer cannot effectively mitigate the risks associated with having a manual election there, in particular without information about the infection levels among staff and residents. It observes that the pandemic situation is highly dynamic, and that the circumstances present at the time of the hearing could change significantly by the time of the election. Petitioner also notes that the voting procedures recommended by the General Counsel would prolong the voting process in a 60-person bargaining unit, requiring the Board agent and observers to remain in a room together for several hours. In addition, it contends that the room offered by the Employer would not comply with the protocol for the ballot count to be sufficiently large to allow for participants of the ballot count to be at least 15 feet away from the Board agent, and that the Employer did not offer to provide plexiglass barriers. It also points out that depending on the voters' release schedule, voting lines could extend beyond the voting area. With respect to the local conditions in relation to the pandemic, the Petitioner points out that the Governor's plan for reopening was designed to balance the public health risks with the dire economic consequences of business closures, a concern not present here. While the Petitioner asks that I consider the directive of Montgomery County School Board's decision not to hold in-person classes in the fall, I note that it cites a document for Montgomery County, Maryland.

The Employer, on the other hand, advocates for a manual election. It argues that it has strict virus protocols in place and the voting employees have a long history of using CDC Universal Precautions, including personal protective equipment, while performing their work. Thus, it contends, the risk to observers and the Board agent is negligible. For the voting area, it offered a room measuring 20 feet by 28 feet, which it believes will allow for social distancing of at least six feet among individuals during the pre- and post-election proceedings. In this regard, it indicated it would control the flow of voters to limit them to two at a time in the room, while the remaining voters can line up in an adjacent hallway, maintaining social distance by complying with appropriate floor markings. It offered to sanitize the voting room and maintain its cleanliness during the voting process, provide new pens to each voter, have hand sanitizer available, provide surgical masks and nitrile gloves, and perform temperature checks. While the Employer also argues that because visitations at the facility have been suspended and entry is restricted to staff and patients, it is safe to conduct an election inside the facility, I note that since the time of the hearing, the CMC has permitted visitations to resume.³⁰ The Employer offered to comply with the guidelines suggested by the General Counsel in his recent memorandum regarding conducting manual elections during the pandemic.³¹ The Employer also highlights the low positivity rate in Montgomery County, where the facility is located, as evidence that the election can be conducted safely. While the Employer's brief also asserts that as of September 21, "no employee of HCR has tested positive for COVID-19," the affidavit it cites in support of that contention does not support it, and the statistics for the facility on the PDH's website show that there have been 14 positive cases among staff in the course of the pandemic.

b. Analysis

³⁰ <https://www.cms.gov/files/document/qso-20-39-nh.pdf>

³¹ [Suggested Manual Election Protocols](#), General Counsel Memorandum 20-10.

The Board has held that the mechanics of an election, such as the date, time, and place, are left to the discretion of the Regional Director. *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011); *Manchester Knitted Fashions*, 108 NLRB 1366, 1366 (1954). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

Although the Board generally has a strong preference for conducting manual elections, it also has a long history of conducting elections by mail. As the Board noted in *London's Farm Dairy*, 323 NLRB 1057, 1058 (1997), “[f]rom the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail.” Indeed, the Board has previously rejected arguments that mail ballot elections are inherently less secure and that they would likely result in voter coercion or reduced voter participation. See *San Diego Gas & Electric*, 325 NLRB 1143, 1146 (1998); *London's Farm Dairy*, 323 NLRB at 1058. There are well-established procedures for conducting effective mail-ballot elections set forth in the Board’s *Casehandling Manual (Part Two), Representation Proceedings*, at Section 11336, et seq.

As to specific instances where mail or mixed manual-mail ballot elections are being contemplated, the Board has stated:

[W]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are ‘scattered’ because of their job duties over a wide geographic area; (2) where eligible voters are ‘scattered’ in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

San Diego Gas & Electric, supra at 1145 (1998). A Regional Director’s exercise of the broad discretion afforded by the Board in selecting the appropriate mechanics for an election will not be overturned “unless a clear abuse of discretion is shown.” *Nouveau Elevator Industries*, supra at 471, citing *San Diego Gas & Electric*, supra at 1144, n. 4. Although the Board expects Regional Directors to exercise their discretion within the guidelines outlined above, it recognizes that deviation from those guidelines may occur in extraordinary circumstances. *San Diego Gas & Electric*, supra at 1145.

The Board has had several occasions to apply these guidelines to the extraordinary circumstances created by the COVID-19 pandemic and has recognized there may be factors outside of the guidelines set forth in *San Diego Gas & Electric* that a Regional Director may consider in making a determination to hold a mail ballot election in such circumstances.³²

³² See, e.g., *Atlas Pacific Engineering Company*, 27-RC-258742, n. 1 (May 8, 2020); see also *Touchpoint Support Services, LLC*, 07-RC-258867, n. 1 (May 18, 2020) (Unpublished order); *Pace Southeast Michigan*, 07-RC-257046,

Moreover, in the analogous context of considering the propriety of video unfair labor practice hearings, the Board recently emphasized that the current pandemic, “the worst public health crisis in the last century,” constitutes “compelling circumstances” that militate against conducting proceedings in person rather than remotely. See *XPO Cartage, Inc.*, 370 NLRB No. 10, slip op. at 1 (August 20, 2020).

I find it appropriate to exercise my discretion to direct a mail-ballot election, the details of which are provided below. The circumstances surrounding the COVID-19 virus are nothing but extraordinary, and, like the rest of the United States, the Commonwealth of Pennsylvania, has been strongly affected by the virus and continues to be affected. COVID-19 transmission is rising rapidly in Pennsylvania as it is elsewhere in the country, and it will doubtless continue to rise as the weather grows colder and people are forced to stay inside where the likelihood of infection is far greater.

Additionally, skilled nursing facility residents have been one of the populations most severely impacted by COVID-19, a risk reflected in the extensive federal and state COVID-19-based regulations of those facilities. These regulations are in place because of the vulnerable nature of the nursing home population, and they obviously require strict adherence. Not only is there a risk to the residents, but that risk clearly extends to the employees who care for them, as evidenced by the many current COVID-19 cases in the Employer’s associated facilities in Pennsylvania, three of them in the same Philadelphia suburban region where the facility at issue is located. Given the prevalence of COVID-19 infection in skilled nursing facilities, this election represents a particular safety concern in conducting a manual election and poses an unnecessary risk of exposure to all parties as well as to residents of the facility.

I have carefully considered the accommodations and arrangements offered by the Employer, but I find that they are inadequate under the circumstances. While the Employer argues that its employees are experienced in the various COVID-19 avoidance practices, the Employer’s data in its daily reports clearly shows that those practices frequently fail to prevent infection in skilled nursing facilities, including its own.

Manual election procedures inherently require substantial interaction among voters, observers, party representatives, and the Board Agent, all of whom must be present at the Employer’s nursing facility, and each interaction increases the risk to the participants. All but the voters would need to gather for pre-election conferences, including the check of the voter list and the parties’ inspection of the voting areas. The Board Agent and observers would share a voting area for the duration of the proposed manual election – a lengthy four hours under the Employer’s proposal to accommodate the facility’s three shifts. The observers would need to check in voters on the voter list, and the Board agent would provide a ballot to each voter. Additionally, there are elements of a manual election that simply cannot be undertaken in compliance with proper social distancing requirements. For instance, in the case of a challenged ballot, the Board Agent, observers, and voter must be in close proximity to deal with the voter challenge, exchange and pass the required envelopes, and initial the appropriate section of the challenge envelope. See Casehandling Manual Section 11338.3. At the conclusion of balloting, the Board Agent would count the ballots, typically in the same voting area, with the observers,

n. 1 (August 7, 2020).

party representatives, and other employees who wish to attend. Were any of those participants to be COVID-19 positive but asymptomatic at the time of the election, the risk to others would be significant. As to the voters' safety, while the Employer assured that it would comply with the measure outlined in GC 20-10, the map of the room entered into the record depicts only one door to the room, which does not comport with GC 20-10's requirement of a separate entrance and exit for voters.

There is also a significant risk of voter disenfranchisement for any voter who is diagnosed with COVID-19 immediately preceding the election, or who is required by federal and state regulations to self-quarantine because the employee is exhibiting symptoms consistent with COVID-19. In light of the timing of the election, which would coincide with the onset of cold weather, other illnesses such as colds, flus and stomach viruses are likely to become prevalent. Under the CMC and the PHD's rules, employees with those illnesses would be required to self-quarantine if they have *any* symptoms consistent with COVID-19 until they receive a negative test result. According to the CDC, these include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.³³ Similarly, were the Board agent to exhibit any of those symptoms on the day of the election, the agent would be barred from entering the facility and the election would have to be postponed. These risks are eliminated by use of the Board's mail-ballot procedures.

Under these circumstances, I conclude that a mail-ballot election is warranted as it will best protect both the employees' right to participate in the election and the safety of all parties.

II. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is a single employer engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction.
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the

³³ <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time Certified Nursing Assistants (CNAs or Nurse Aides), Activity Assistants, Central Supply Clerks, Floor Care employees, General Clerks, Laundry Aides, Housekeeping Aides, Laundry/Housekeeping Aides, Medical Records Clerks, Staffing and Scheduling Coordinators, and Temp Nurse Aides (PCAs) employed by the Employer at its 600 West Valley Forge Road, King of Prussia, Pennsylvania facility.

Excluded: All other employees, Directors of Maintenance, Social Services Coordinators, professional employees, confidential employees, managerial employees, technical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by District 1199C National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00 p.m., local time, on Thursday, October 29, 2020. Voters must return their mail ballots so that they will be received by close of business on Friday, November 27, 2020. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

The mail ballots will be commingled and counted on Friday, December 4, 2020 at 10:00 a.m. at a location to be determined, either in person or otherwise, after consultation with the parties, provided the count can be safely conducted on that date. In order to be valid and counted, the returned ballots must be received by the Region Four office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact Election Clerk Ed Canavan at (215) 597-7618 no later than 5:00 p.m. on Thursday, November 5, 2020 in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending October 5, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.³⁴

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by October 19, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the

³⁴*Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990); *Davison-Paxon Co.*, 185 NLRB 21 (1970).

website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for

review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: October 15, 2020



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